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In re Application of
VEILLAT *et al*
U.S. Application No.: 10/530,435
PCT No.: [REDACTED] PCT/PL2003/000687
Int. Filing Date: 1 [REDACTED]
Priority Date: [REDACTED]
Attorney Docket No.: [REDACTED] 4662-9
For: PROCESS FOR MAKING A
MONOFILAMENT-LIKE PRODUCT

DECISION

This decision is in response to applicants' "Petition Under Rule 47" filed 28 September 2005 which is treated as a petition under 37 CFR 1.47(a).

BACKGROUND

On 16 September 2005, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) was required. Applicants were given two months to respond with extensions of time available.

On 28 September 2005, applicants filed the instant petition which was accompanied by, *inter alia*, a declaration signed by one of the two co-inventors; a declaration of Jan P.C. Bootsma ("Decl."); exhibits A-C; and authorization to charge the petition fee and any additional fee to counsel's Deposit Account.

DISCUSSION

In response to the Form PCT/DO/EO/905, applicants filed the petition under 37 CFR 1.47(a) claiming that one of the joint inventors, Cyril David Veillat, refuses to cooperate.

A petition under 37 CFR 1.47(a) requires: (1) the petition fee; (2) factual proof that the missing joint inventor cannot be located or refuses to cooperate; (3) a statement of the last known address of the nonsigning joint inventor; (4) and an oath or declaration executed by the signing joint inventor on their behalf and on behalf of the nonsigning joint inventor.

Concerning item (1), the fee for a petition under 37 CFR 1.47 changed to \$200.00 on 08 December 2004. Petitioners authorized that a \$130.00 petition fee be charged to

counsel's Deposit Account. The \$70.00 difference has been charged to Deposit Account No. 14-1140 as authorized.

With regards to item (3), the last known address of co-inventor Cyril David Veillat is listed as:

Bergerstraat 117
BC Maastricht
The Netherlands NL-6226

Concerning item (4), the 37 CFR 1.47(a) applicant submitted a declaration signed by one of the two co-inventors on their own behalf and on behalf of the nonsigning joint inventor. This declaration meets the requirements of section 409.03(a) and is in compliance with 37 CFR 1.497(a) and (b).

Items (1), (3) and (4) of 37 CFR 1.47(a) are satisfied.

Regarding item (2), the 37 CFR 1.47(a) applicant included a declaration by Jan P.C. Bootsma who claims that the nonsigning inventor refuses to cooperate in the above-captioned application. Mr. Veillat purportedly told Mr. Bootsma that he had received the "inventors' Declaration and Assignment forms but he would not execute them since DSM had not been very cooperative to him." Decl. at ¶ 5.

Applicants' burden in proving that an inventor refuses to cooperate is explained in section 409.03(d) of the MPEP which states, in part:

A refusal by an inventor to sign an oath or declaration when the inventor has not been presented with the application papers does not itself suggest that the inventor is refusing to join the application unless it is clear that the inventor understands exactly what he or she is being asked to sign and refuses to accept the application papers. A copy of the application papers should be sent to the last known address of the nonsigning inventor, or, if the nonsigning inventor is represented by counsel, to the address of the nonsigning inventor's attorney. The fact that an application may contain proprietary information does not relieve the 37 CFR 1.47 applicant of the responsibility to present the application papers to the inventor if the inventor is willing to receive the papers in order to sign the oath or declaration. It is noted that the inventor may obtain a complete copy of the application, unless the inventor has assigned his or her interest in the application, and the assignee has requested that the inventor not be permitted access. See MPEP § 106. It is reasonable to require that the inventor be presented with the

application papers before a petition under 37 CFR 1.47 is granted since such a procedure ensures that the inventor is apprised of the application to which the oath or declaration is directed. *In re Gray*, 115 USPQ 80 (Comm'r Pat. 1956).

Here, petitioners indicate that a copy of the application papers were not sent to Mr. Veillat. Decl. at ¶ 4. Thus, the purported oral refusal discussed in the declaration of Mr. Bootsma will not be considered. As indicated above, the fact that there may be proprietary information contained in the subject application does not relieve petitioners the duty to present a complete copy of the application to the inventor.

Moreover, the letters submitted as exhibits A and B are in a foreign language without an accompanying English translation. The Office does not accept letters in a foreign language without an accompanying English translation. In addition, the translation of Article 15 of the collective labor agreement submitted in exhibit C is not relevant without a copy of the nonsigning inventor's employment agreement (with English translation).

For these reasons, item (2) is not yet satisfied.

CONCLUSION

Applicants' petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. No additional petition fee is required.

Any further correspondence with respect to this matter deposited with the United States Postal Service should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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